

DEPARTMENT OF HUMAN SERVICES

DATE REVISED AND EFFECTIVE: May 1, 2010

DATE INITIALLY ISSUED: January 25, 1993

SUBJECT: HIV Policy

I. PURPOSE

The purpose of this Order is to provide guidance to all components of the Department of Human Services (DHS) for the testing, prevention, management of client and employee HIV exposure, infection incidents and issues of confidentiality.

II. SCOPE

This Administrative Order has Department-wide applicability.

III. AUTHORITY

- * Centers for Disease Control and Prevention (CDC) – Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings, September 22, 2006
- * New Jersey Department of Health and Senior Services Health Bulletin Re: Routine Screening for HIV Infection, January 25, 2008
- * Acquired Immune Deficiency Syndrome – N.J.S.A. 26:5C-1 et seq.
- * Reporting HIV Infection – N.J.A.C. 8:57-2.2
- * Vocational Rehabilitation Act of 1973 – 29 U.S.C. 791 et seq.
- * Americans with Disabilities Act 42 U.S.C. 12.101 et seq.
- * Occupational Exposure to Bloodborne Pathogens – 29 C.F.R. part 1910 Subpart Z, 1910.1030
- * New Jersey Law Against Discrimination – N.J.S.A. 10:5-1 et seq.
- * State Psychiatric Facilities; hepatitis, HIV and sexually transmitted disease testing on admission; treatment N.J.S.A. 30:4-7.8

IV. DEFINITIONS

The following terms, when used in this Order, have the meanings stated:

AIDS (acquired immunodeficiency syndrome) means a group of symptoms and disorders in the advanced stages of human immunodeficiency virus (HIV) infection which impairs the body's ability to fight infection and leaves a person vulnerable to opportunistic infections, i.e., infections that take advantage of the body's inability to resist disease. An HIV infected patient with a level of CD4 cells in the blood below 200 per cubic millimeter will be considered to have AIDS.

Accidental Exposure means an incident where an open wound, skin lesion, or the mucous membrane of an individual accidentally comes in contact with blood or other body discharges from another person, or where an individual is stuck by a needle or other sharp instrument previously used on another person.

Asymptomatic Carrier means a person infected with HIV and therefore capable of transmitting the disease but who has no symptoms.

Authorization means a written, HIPAA complaint authorization, signed by the client or the client's Personal Representative. See Administrative Order 2:01.

Casual Contact means close, but nonsexual interaction, such as handshakes, hugging, or kissing on the cheeks; sharing towels, eating or drinking utensils; and, exposure to sneezing or coughing.

Client means any individual who receives services from the Department of Human Services (DHS).

DHS Facility means an institution, community residence or other building or group of buildings staffed by employees of the Department and used for the purpose of delivering services to Department clients.

General Consent means written authorization for routine medical care.

HIV (human immunodeficiency virus) means a virus, transmitted through blood, semen, vaginal secretions, or breast milk of infected persons, that destroys the cells which make up the body's immune system causing the body to be unable to defend itself from "opportunistic" infections.

HIV-Related Information means any information that is likely to identify, directly or indirectly, someone as having been tested for or actually having HIV infection, antibodies to HIV, AIDS, or related infections or illness, or someone suspected of having HIV as a result of high risk activities.

Informed Consent means a discussion about the patient's proposed care, treatment, and services, as well as a discussion about potential benefits, risks, and side effects of the patient's proposed care, treatment, and services, the likelihood of the patient achieving his or her goals, and any potential problems that might occur during recuperation. Additionally, it includes a discussion about reasonable alternatives to the patient's proposed care, treatment, and services. The discussion encompasses risks, benefits, and side effects related to the alternatives, and the risks related to not receiving the proposed care, treatment, and services.

Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.

Personal Representative means a person who has legal authority, under State or applicable law, to act on behalf of an individual.

Protected Health Information (PHI) means (1) individually identifiable health information that is: (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium. PHI excludes individually identifiable health information in: (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g including records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (ii) employment records held by a DHS agency in its role as an employer.

Standard Precautions is an approach to infection control. According to the concept of Standard Precautions, all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.

V. POLICIES AND PROCEDURES

A. Discrimination Prohibited

The Department of Human Services and its employees shall serve any and all citizens of New Jersey who, by statute or regulation, are eligible for services provided by the Department and its Divisions, including those with a suspected or confirmed diagnosis of HIV infection with or without AIDS symptoms.

The Department shall not discriminate in any manner in hiring and job assignment practices against known or perceived HIV exposed or HIV infected employees or applicants for employment.

B. CDC Recommendations

The Department of Human Services shall adopt and incorporate herein the most recent CDC Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings.

C. Division-Specific Policies

Any Division may develop Division-specific policies and procedures within the purview of this Administrative Order. All separate Division-specific policies and procedures must be reviewed and approved by the Office of Legal and Regulatory Affairs in the Department prior to issuance.

D. Testing for HIV

1. CDC Revised Recommendations for Consent

CDC Revised Recommendation for HIV Testing of Adults, Adolescents and Pregnant Women in Health-Care Settings specifically eliminates the requirement for a separate, written or oral consent for HIV testing and instead allows "general consent" for the performance of medical procedures or tests to suffice.

2. General Consent

- a. A client or legal guardian who gives general consent for medical procedures and tests (such as blood tests) is not required to also sign or be presented with a specific informed consent form relating to procedures or tests to determine HIV infection or antibodies to HIV.
- b. If a client appears incompetent to give consent, but has not been declared legally incompetent and has no legal guardian, the proper guardianship procedures must be instituted before the medical procedures or tests can be given.
- c. "General Consent" includes instruction to the client or legal guardian that (1) as part of the medical procedures or tests, the client may be tested for HIV and (2) such testing is voluntary and the client can choose not to be tested for HIV or antibodies to HIV.
- d. "General Consent" that includes HIV testing must be given voluntarily, without undue inducement or any form of compulsion, fraud, deceit, duress, or other constraint or coercion.

3. Pre-Test Counseling Requirements

Although extensive pre-test counseling is no longer required, the client or guardian must receive the following information, in a manner he or she understands, at the minimum: (1) how HIV is transmitted, (2) the benefits of voluntary testing for HIV and knowing whether one is infected with HIV; (3) the benefits of early diagnosis and medical intervention (4) the right to refuse the test without fear of denial of any treatment due to refusal.

4. Refusal to Test

If a client or legal guardian refuses an HIV-related test, the refusal must be documented in the medical record.

5. Test Results

- a. The physician who orders the test, or the attending physician or nurse practitioner, shall be responsible for informing the client or legal guardian of the results of the test for HIV infection and the meaning of those results. The physician shall also advise clients or legal guardians of a negative test result and measures which can be taken to prevent HIV infection.
- b. The physician or nurse practitioner shall advise clients who test positive for HIV and legal guardians about the appropriateness of and need for further testing, methods to prevent transmission of HIV and appropriate medical care for the client.

6. Positive Test Results

No test result shall be determined as positive and no positive test result shall be revealed to any person, without corroborating or confirming tests being conducted, except as allowed by section E below relating to "rapid tests".

E. Rapid Tests

1. Nothing in this subsection shall be construed as prohibiting the disclosure to the client or legal guardian of preliminary positive results from HIV rapid tests if results are delivered with an explanation of the following:
 - a. The meaning of a reactive rapid test;
 - b. The importance of confirmatory testing; and

- c. The importance of taking precautions to reduce the risk of infecting others while awaiting the results of confirmatory testing.
2. In special cases where immediate actions may be necessary to protect a client, such as potential perinatal transmission or incidents warranting post-exposure prophylaxis, a preliminary positive result from a HIV rapid test may be disclosed to the patient and used as a basis to recommend options for prophylaxis or treatment.

F. Confidentiality of HIV-Related Information

1. Department of Human Services' employees have a duty to maintain the confidentiality of all protected health information, including HIV-related information. Access, confidentiality and disclosure of protected health information, including HIV-related information, is governed by DHS Administrative Order 2:01.
2. The confidentiality requirements of both this Administrative Order and Administrative Order 2:01 apply to all DHS employees (full and part time), independent contractors, consultants, licensees, hourly employees, interns, volunteers and board members.
3. All HIV-related information is confidential, whether it relates to clients (meaning individuals who have applied for, are receiving or have received services and/or benefits from the Department), their families, their partners and DHS employees. Generally, the right to decide to whom information may be disclosed rests with the individual about whom the information pertains, and not with DHS employees.
4. HIV-related information means any information that is likely to identify, directly or indirectly, someone as having HIV infection, antibodies to HIV, AIDS or related infections or illness, or someone suspected of having HIV as a result of high-risk activities.
5. HIV-related information remains confidential regardless of the source from which it is obtained. Information intentionally disclosed by the client, a family member, partner, or from any other source, remains confidential unless disclosure has been authorized by a specific provision in this Administrative Order or Administrative Order 2:01. This means that *a client's voluntary disclosure of HIV-related information should not be repeated or re-disclosed except where specifically authorized.*
6. To avoid accidental disclosures, HIV-related information must not be discussed in break rooms, common areas, such as hallways and elevators, or in the presence of other clients or families, and records or computer screens with HIV-related information must never be left unattended.

7. Written records or computer files that are generally available to agency staff must not be labeled or segregated in a manner that could lead to its identification as containing HIV-related information.
8. Any individual who violates these confidentiality provisions may be subject to civil and/or criminal liability, including fines or imprisonment, disciplinary action under A.O. 4:08 and reporting to licensing and/or professional boards.
9. Individuals who are likely to work with HIV-related information will receive training in the meaning of and procedures required by the policy as required by section N of this policy, "Personnel Training and Education".

G. Disclosure of HIV-Related Information – Authorization Required

1. Written Authorization Required

- a. Generally, a written, HIPAA compliant authorization is required before any protected health information, including HIV-related information, may be disclosed. The authorization must be signed by the individual whose information is being disclosed, or the individual's Legal Representative (such as the client's legal guardian). If the client's record contains HIV-related information of a third party (such as a family member), that information cannot be disclosed without a written, HIPAA compliant authorization from that individual (meaning the third party) before the information is released. Alternatively, the information relating to the third party may be redacted from the record.
- b. The written authorization must conform to the requirements of AO 2:01.6 in order to be HIPAA compliant. ***Authorizations to disclose HIV-related information must specifically state that HIV information may be disclosed.*** A general authorization for "all medical records" is not sufficient.
- c. Clients have the right to disclose HIV-related information about themselves to anyone they choose, including other clients. However, because of emotional or cognitive impairments, or age, they may not understand or appreciate the potential consequences of disclosure. Therefore, health care professionals should counsel clients about the potential risks of disclosure and the risks of non-disclosure.

- d. All adults, including those with developmental disabilities or mental illness, are presumed to be legally competent to give or deny consent to disclosure of HIV-related information unless they have been adjudicated incompetent to make this type of health care decision. If a substitute decision maker has been appointed to make such health care decisions, a written authorization must be obtained from that individual.
- e. Authorization shall be obtained from the parent, guardian or other individual authorized under State law to act in a minor's behalf when consent is required for disclosure of the record of a minor who has or is suspected of having HIV infection. If a minor is 12 years of age or older, understands the diagnosis, and a parent or guardian is unavailable, the minor can consent to the release of this information (N.J.S.A. 26:5C-13).

2. Authorization to Disclose – Lack of Capacity Suspected

When a client has not been adjudicated incompetent, but there are clear indications that the client lacks the mental capacity to understand and appreciate the treatment information being presented, the following steps should be taken. If staff believe that the client lacks the capacity to give consent to the disclosure of HIV related information, or for treatment purposes, then staff should implement standard procedures for the review of the client's competency. If a medical emergency exists that requires disclosure of HIV-related information in order to protect the client's health from imminent harm, then standard emergency procedures should be implemented. If staff have questions relating to proper procedures in these circumstances, they should contact their legal liaison.

3. Authorization to Disclose – Legally Incompetent

When the client has been adjudicated legally incompetent to give consent to disclosure of HIV-related information, staff should still explain to the client, to the extent that he/she can understand, the purpose of the proposed disclosure and ascertain the client's preference.

Since an individual's capacity to provide informed written consent may change over time, there may be periodic need to reassess legal competency.

H. Disclosure of HIV-Related Information – Without Authorization

There are limited circumstances in which protected health information, including HIV-related information, may be disclosed without the written authorization of the client or the client's Legal Representative. These circumstances are addressed in A.O. 2:01 and N.J.S.A. 26:5C-8. If you have any questions about whether client information may be released without the client's written authorization, you should contact your Privacy Officer.

1. Protected Health Information, including HIV information, may be disclosed without a client's authorization for treatment, payment and healthcare operation purposes, as permitted in A.O. 2:01. *All disclosures of client information are subject to the minimum necessary standard* set forth in A.O. 2:01.4. This means that staff may access only that information which is required to perform their job duties.
2. PHI may be disclosed in connection with any notification required by law for epidemiological purposes.
3. Access to or disclosure of HIV-related information without a client's consent is not permissible based on a perceived need to protect staff members, clients, or anyone else from possible exposure to HIV through casual contact.

I. Documenting Disclosures of HIV-Related Information

1. Duty to Warn Against Re-Disclosure

All written disclosures of HIV-related information shall be accompanied by a written statement that New Jersey law requires that the information be held confidential by the recipient and that the information shall not be redisclosed to anyone else without the client's written authorization or as otherwise allowed by N.J.S.A. 26:5C-11. All oral disclosures of HIV-related information will be accompanied by an oral warning against redisclosure. Unauthorized disclosures may lead to civil action against violators pursuant to N.J.S.A. 26:5C-14.

2. Documenting Disclosures

All disclosures of HIV-related information shall be documented in compliance with the accounting requirements of A.O. 2:01.23, which require documentation of the following: the date of each disclosure; the name and address of the person/entity receiving the information; a description of the information disclosed; a statement of the reason for the disclosure.

J. Legal Reporting Requirements

1. Any person, employee or client, identified as infected with HIV shall be reported to the State Department of Health and Senior Services in accordance with the requirements of N.J.A.C. 8:57-2.4. as noted below:
 - a. A health care provider or responsible party for an institution providing services to an individual found to be infected with HIV, or ordering a test resulting in the diagnosis of HIV, shall, within 24 hours of receipt of a laboratory report indicating such a condition, or within 24 hours of making a diagnosis of HIV infection, report in writing to the Department of Health and Human Services, using the Adult HIV/AIDS Confidential Case Report Form (DHSS Form).
 - b. A health care provider or responsible party may delegate this reporting activity to a member of the staff, but this delegation does not relieve the health care provider or responsible party of the ultimate reporting responsibility.
 - c. A health care provider or responsible party who provides medical services to an individual found to be infected with HIV, or orders tests resulting in the diagnosis of HIV, shall make the names of the individuals infected with HIV along with their medical records available to the Department of Health and Senior Services for audit or epidemiologic investigation.

K. Clinical Procedures – Standard Precautions Required

All components of the Department of Human Services will follow the New Jersey Department of Health and Senior Services and the Centers for Disease Control recommendations on the practice of standard precautions in situations involving handling blood and body fluids.

All components of the Department of Human Services will follow the requirements of the Occupational Exposure to Bloodborne Pathogens Standard (29 C.F.R. Part 1910).

L. Exposure

Scientific and epidemiological evidence reports that the kind of person-to-person contact that generally occurs among workers and clients or consumers in the work place poses minimal risk of transmission of HIV when standard precautions are used. All employees are encouraged to know their HIV status.

1. Employee Exposure to HIV and Post Exposure Follow-up

- a. Following a report of accidental exposure, the employee shall immediately be offered a confidential medical evaluation and follow-up, including at least;

(1) Documentation of the route(s) of exposure, and the circumstances under which the exposure occurred;

(2) Identification of the source individual unless the employer can establish that identification is not feasible or prohibited by law. (29 C.F.R. 1910.1030).

- b. The Medical Director, or other medical practitioner, will assess whether a significant risk of HIV transmission exists. If it does, the medical person will counsel the individual about HIV transmission and the advisability of having an HIV antibody test if one has not already been given.

2. HIV Testing of Source Individuals

- a. The source individual's blood, if the source has not already been identified as infected with HIV, shall be tested as soon as feasible and after consent is obtained in order to determine HIV infectivity. If consent is not obtained it shall be established that legally required consent cannot be obtained.
 - b. The medical record of the source individual's blood cannot be accessed to confirm HIV exposure without the written authorization of the source individual or his or her legal guardian or a court order. If the source individual or legal guardian refuses to authorize disclosure, the refusal shall be documented.
 - c. If the source individual or legal guardian authorizes access to the medical record, but the source individual has not been tested for HIV/AIDS, the appropriate testing shall be offered immediately. The source individual or legal guardian must consent to the testing. If consent is not obtained it shall be established that legally required consent cannot be obtained.
 - d. If the source individual or legal guardian authorizes disclosure, the results of the testing shall be made available to the exposed employee. The employee shall be informed of applicable laws and regulations concerning disclosure/redisclosure of the identity and infectious status of the source individual.
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- e. If the source individual or legal guardian refuses to authorize disclosure of HIV-related status, and/or refuses HIV testing, the exposed employee may request that an application be made for a court order to compel testing and/or disclosure.
 - f. As of the date this A.O. was revised, the technology for HIV/AIDS testing could only diagnose whether an individual had HIV up to six months before

the test. Consequently, even with HIV testing, there is a six month window for unknown exposure to have occurred.

3. HIV Testing and Counseling for Exposed Employees

- a. The exposed employee shall be referred to an established center for testing and counseling. Department of Health and Senior Services Confidential Counseling and Testing Sites are recommended. Treatment and/or counseling shall not be provided by DHS entities directly.
- b. The exposed employee shall be offered post-exposure prophylaxis, when medically indicated, as recommended by the U.S. Public Health Service.

M. Employees with HIV/AIDS

1. Employee's Ability to Work

- a. The New Jersey Law Against Discrimination ("LAD") prohibits employment discrimination based on physical or mental handicap or a perception of handicap. Any person infected with HIV is considered "handicapped" under the LAD. Employees with identified HIV-related medical conditions which impair their health and ability to perform safely and effectively should be handled in a manner consistent with other serious or life-threatening illnesses and the Civil Service Commission policies.
- b. All HIV infected employees may continue to work to the fullest degree possible as long as they are physically and mentally able to perform their job. The relevant standard is job performance, which should be applied fairly and consistently to all employees.
- c. If it becomes necessary to modify job assignments because of increasing disability, reasonable accommodations shall be provided pursuant to the Americans with Disabilities Act ("ADA") and the New Jersey Law Against Discrimination and following all procedures in A.O. 4:07. In order to avoid assumptions about what an employee can and cannot do because of injury, the accommodation process shall be undertaken upon a request by the employee.

2. Privacy and Confidentiality

- a. Employers have a duty to protect the confidentiality of an employee's medical information which shall be secured and kept separately from the employee's personnel file. Any medical documentation relating to an employee's HIV status will be considered to be confidential.

- b. Medical records may not be disclosed without the consent of the subject employee, by order of a court, or where disclosure is mandated by law.
- c. Supervisors, managers and other employees involved in making and implementing personnel management decisions involving employees who reveal medical information about themselves or who have HIV related conditions which are observed, must strictly observe applicable privacy and confidentiality requirements.

3. Leave Administration

Requests for leave shall be handled in a manner consistent with any request for leave which arises from any medical disability.

4. Employee Conduct

- a. In situations where employees express reluctance or refusal to work with HIV infected clients or employees, management shall initially address these problems through immediate counseling and education.
- b. Employees who continue to express reluctance and/or refusal to work with HIV infected clients or employees may be subject to corrective/disciplinary action in accordance with Supplement 1 of Administrative Order 4:08.

N. Personnel Training and Education

The Department, recognizing that education is one of the most effective means of preventing the spread of HIV and of dispelling fears associated with the disease, shall make available to its employees current, accurate and objective information concerning HIV.

1. Training and Education

- a. All Direct Care employees shall receive Infection Control/HIV/TB/Bloodborne Pathogens training.
- b. More comprehensive, advanced and/or specialized training and education in such areas as infection control shall be provided for those employees whose job responsibilities may warrant such training or who may be determined to be at increased risk of exposure.
- c. Retraining or additional training shall be provided if a change in job responsibilities or work assignment is determined to increase an employee's risk

of exposure or when a change in the state of knowledge of HIV necessitates such training.

2. Responsibility for Training

Infection Control Officers, in conjunction with local training units, shall be responsible for:

- a. determining the training in which employees should participate;
- b. scheduling employees for needed training.

VI. PROCEDURAL HISTORY

The first Administrative Order this Department issued on the subject of HIV was issued as A.O. 2:08, on January 25, 1993 and effective February 1, 2003. This document is the first revision to A.O. 2:08.

DATE:

8/1/10


Jennifer Velez, Commissioner